

Illinois CAFO Program Workload Assessment

December 2013

Under the current Illinois Program Work Plan for 2013, Water Programs, “NPDES Permitting for Concentrated Animal Feeding Operations”, “Objective 1: All Large CAFOs that discharge are in compliance with NPDES permits”, the USEPA required the Illinois EPA to provide a final workload assessment to identify full time employees required to implement an effective CAFO permitting, compliance evaluation, and enforcement program taking into account the CAFO universe identified in the CAFO inventory. The final assessment needed to identify staff distribution by function and geographic area of responsibility.

Field Operations (Compliance Evaluation)

Historical Perspective:

Following the Illinois Environmental Protection Act and Chapter 5: Agriculture Related Pollution (the forerunner of Title 35: Environmental Protection, Subtitle E: Agriculture Related), the Illinois EPA’s agriculture program comprised of six (6) dedicated staff within the Division of Water Pollution Control’s Field Operations Section (DWPC/FOS). The staff was located in the Rockford, Peoria, Champaign, Springfield, Collinsville and Marion Regional Offices and tasked to inspect both livestock and agricultural chemical facilities. At that time, the FOS program was primarily complaint driven though performed compliance evaluations at the limited number of the livestock NPDES Permits. Facility files were retained in the DWPC/Records Unit (currently the Division of Records Management) and the pertinent information compiled in the annual Ag Survey Report.

February 2011 Work Plan Agreement:

Program reviews and discussions with USEPA Region 5 resulted in the February 2011 Work Plan Agreement. For DWPC/FOS, the Agreement set forth specific actions and milestones pertinent to the CAFO program. Relevant to DWPC/FOS staff levels, the Illinois EPA was awarded 106 Supplemental funding for CAFO Regulator Activities, EIN #01-052642. In April 2011, the Illinois EPA hired three new FTEs in FOS to bolster inspections, monitoring and enforcement activities related to CAFOs. The new FTEs were assigned to the Rockford, Peoria and Marion Regional Offices. During the February 2011 and subsequent Work Plans, various work products were developed to augment the CAFO program that included, CAFO Field Procedures Manual; CAFO Inspection Checklist; CAFO Inspector Training Curriculum; Enforcement Response Guide; and internal SOPs.

Inspection Indices:

As with any new hires, there was a natural delay in their ability to act independently, but after a period of mentoring by more experienced DWPC/FOS staff, their performance indicia increased Illinois Program Work Plan for 2013 over time. For comparison purposes, in FFY 2009, the FOS staff conducted 102 inspections at livestock facilities. Since the Agreement, the number of CAFO inspections increased from 187 inspections in FFY 2010; 289 inspections in FFY 2011; and 281 inspections in FFY 2012.

In June 2012 and in May 2013, one (1) of CAFO staff in the Rockford and Peoria Regional Offices left the Agency. As a result, the number of CAFO inspections declined for FFY 2013 to 135.

Despite the decline in FFY 2013 inspections, the core CAFO program objectives were met including FFY '13 commitments, spill/release responses, and citizen complaint investigations. In addition, where necessary, the CAFO inspection program proceeded with timely enforcement under the Illinois Environmental Protection Act and its related regulations and assured compliance with the Clean Water Act.

CAFO Inventory:

Over the years, information on livestock facilities has been compiled from a variety of sources, e.g., field inspections, NPDES Permit applications (including Storm Water Construction NOIs), IEMA and NRC Reports, IDOA LMFA program, IDPH – dairy program, IEMA/NRC Reports, and contractors research. As the CAFO NPDES Permit program evolved, this information culminated in the issuance of 39 NPDES Permits. In February 2013, in response to the “Illinois Program Work Plan for 2013”, DWPC compiled a CAFO Inventory that currently lists 260 livestock facilities, and subsequently developed a SOP for updating the Inventory.

FFY 2014 PPA Proposed CAFO Program Inspection Plan:

The FFY '14 proposed DWPC/FOS inspection plan submitted to USEPA Region includes inspections at 20% of all permitted CAFOs to ensure NPDES Permit compliance, and 25 NPDES evaluations with at least 12 completed during or after precipitation events. As indicated in the previous FFY data, DWPC/FOS routinely exceeds these commitments.

Program Enhancements:

The DWPC/FOS CAFO program continues to evolve. Through regular CAFO program staff meetings and further training, we are achieving greater level of consistency, improved interactions with other program staff, and striving for 90-day report turnaround. We are also initiated a “rugged laptop” pilot program that is envisioned to improve inspection and reporting capabilities and also will incorporate direct data outsourcing. The Agency routinely participate in outreach meetings and public programs with producer groups and facilities. These events provide a forum to enhance communications on a range of pertinent topics including common problems encountered and view technology improvements. The enhancements undertaken have and those underway will produce positive impacts on our current CAFO program.

Future FFY Inspection Strategy:

In the future, the DWPC/FOS inspection Strategy will continue to meet our core objectives, that is, consistency with USEPA’s National NPDES Compliance Monitoring Strategy; responsive spill/release follow-up; timely citizen complaint investigations; and effective compliance/enforcement support. The CAFO Inventory will be integral to this Strategy. With increased field presence, the facilities list in the Inventory will grow and so too, the number of NPDES Permitted facilities each FFY.

Staff Needs to Meet CAFO Program Objectives:

To meet this Strategy, the CAFO program will need to continue its evolution. In addition, DWPC/FOS CAFO program staff levels need to return to the post-April 2011 levels, that is, one (1) additional staff each in the Rockford and Peoria Regional Offices.

NPDES Permitting

Background

Pursuant to the Work Plan, DWPC/Permits hired 3 permit engineers to process applications for NPDES permits submitted by livestock operations. These positions are assigned to IEPA Headquarters in Springfield. These staff have processed applications according to the SOP for CAFO NPDES Permits, approved by USEPA in April 2013. Applications are received mainly as a result of inspection and compliance assurance/enforcement actions that identify on-going discharges from CAFOs.

Anticipated Workload

Although the permit review process is fairly intensive, the universe of potentially regulated facilities is relatively modest compared to other types of minor NPDES dischargers. The CAFO Inventory identifies 260 large CAFOs, 39 of which are currently permitted. There are currently 18 applications under review. The estimated FY14 permitting actions project 4 new applications permitted, 33 permit renewals, 10 NPRs or terminations. In addition, the general permit will be up for renewal in FY 14. Permitting staff are currently reviewing files to determine the need for permits at 15 facilities that are under enforcement. Additional requests for this permit requirement review are anticipated as inspections identify CAFO-related discharges.

Staffing Needs

In consideration of the existing and anticipated permitting workload, staff needs for this function are two existing permit engineer positions.

Compliance Assurance/Enforcement

Background

When a violation of the Illinois Environmental Protection Act by a CAFO is identified, Section 31 of the Act establishes the process for to be followed for resolution. The pre-enforcement steps include issuance of a violation notice, meeting with the violator, developing or evaluating terms of a potential Compliance Commitment Agreement, coordinating with other Bureau of

Water sections and/or USEPA on the violation, correspondence and data management. The enforcement response in a particular case is determined by following the Bureau of Water Enforcement Response Guide, the CAFO-related portion of which has been submitted to USEPA. Pre-enforcement steps are handled by the Division of Water Pollution Control Compliance Assurance Section (CAS), located at Illinois EPA Headquarters in Springfield. Since Illinois EPA lacks administrative enforcement authority, any compliance order or penalty must be secured by the Illinois Attorney General's Office (AGO) or USEPA. The Illinois EPA Division of Legal Counsel, Water Enforcement Unit, located in Springfield, develops the referrals that go to the Illinois AGO or to USEPA.

Anticipated Workload and Staffing Needs

The workload related to compliance assurance/enforcement will continue to be tied to the number of inspections, described above. Over the past few years, the number of Violation Notices for CAFOs has been approximately 15-20 per year, 15-20% of which get referred for formal enforcement. As the number of permitted operations increases, so will the number of routine inspections that may uncover permit compliance-related violations.

Both the CAS and DLC-Water Enforcement Unit have experienced staff losses over the past several years. The Agency has been able to hire two water enforcement attorneys, and is in the process of filling two vacancies in CAS. Unlike the FOS and Permits Sections, CAS and DLC-Water Enforcement do not dedicate a staff person to a particular facility type, so VNs and referrals for CAFOs can be assigned to any staff member. The addition of new staff in these units will assure that the anticipated Section 31 activities related to the CAFO Program will continue to be handled in a timely and appropriate manner.